

**Sub: In the matter of petition under sections 61, 62 and 86 of the Electricity Act, 2003 read with Regulations 4.5, 4.6 and 6 of the MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010**

**ORDER**

**(Date of hearing: 24<sup>th</sup> August,2013)**

**(Date of order: 30<sup>th</sup> August,2013)**

M/s ASN Industries Pvt. Ltd., - Petitioner  
205, Mayfair Gardens, Road No.12,  
Banjara Hills, Hyderabad

M.P.Power Management Co. Ltd. - Respondent  
Shakti Bhawan, Rampur, Jabalpur-482008

Mrs. Swapna Seshadri, Advocate and Shri V.M.Kishore, Director of the company appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of the respondent.

2. The petitioner, M/s ASN Industries Pvt. Ltd. has filed this petition under sections 61, 62 and 86 of the Electricity Act,2003 read with Regulations 4.5, 4.6 and 6 of the MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I)Regulations, 2010 for clarifications on the tariff and seeking directions to the respondent to enter into a power purchase agreement.

3. Facts of the case:

(a) The petitioner set up a 7.5 MW biomass based power plant in District Katni in Madhya Pradesh. The plant was commissioned on 08.12.2011. After commissioning of the plant, the petitioner reported that they had been supplying power to the respondent at the pooled purchase cost @ Rs. 2.47 per unit determined by the Commission. But, the plant could not run on a sustained basis.

(b) In January, 2012, the Commission initiated the process of determination of tariff for biomass plants for the period from 01.04.2012 onwards and after hearing the parties passed a tariff order on 02.03.2012. The Commission also determined the tariff for existing projects. By order dated 01.06.2012,

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the Commission amended the variable charge component to Rs. 2.45 per unit. The aforesaid order dated 02.03.2012 was challenged before Hon'ble Appellate Tribunal for Electricity (APTEL) and by judgment dated 18.02.2013, the case was remanded back to the Commission. After inviting comments and holding a public hearing, an order was passed on 03.05.2013 which revised the tariff order dated 02.03.2012.

(c ) By its letter dated 08.05.2013, the petitioner approached the respondent to sign a PPA in terms of tariff order dated 03.05.2013. There has been no response from the respondent. Hence, this petition.

(d) In light of the above submissions, the petitioner has prayed before the Commission to clarify that:

- (i) the tariff applicable to the petitioner is the fixed costs as per the order dated 07.08.2007 and the variable costs in terms of the orders dated 02.03.2012 and 03.05.2013;
- (ii) direct the respondent to enter into an appropriate PPA with the petitioner.
- (iii) In the alternative and if the respondent is not willing to enter into a PPA with the petitioner, direct the respondent not to restrict open access so that the petitioner's plant can at least attempt to get a viable price by sale to third parties.

4. The case was listed for hearing on 24.08.2013.

5. During the hearing on 24.08.2013, Counsel for the petitioner reiterated the contents of the petition. She also stated that at the time commissioning of plant in December, 2011, the tariff order dated 07.08.2007 was applicable. The Commission had issued another tariff order on 02.03.2012 for the control period from 01.04.2012 onwards

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indicating tariff for the projects which have their date of commissioning before 02.03.2012, which was revised on 01.06.2012 refixing the variable charges at Rs.2.45 per unit. The order dated 02.03.2012 was challenged before the Hon'ble APTEL. APTEL set aside this order on five issues and remanded the matter back to the Commission. In the remand proceedings, the Commission reverted to a single-part tariff from a two-part tariff and passed the order dated 03.05.2013. The Commission had not deleted para 9.1 of the tariff order dated 02.03.2012, which is applicable for existing projects. She also requested the Commission to clarify the position on the calculation of tariff as applicable to the petitioner. She further submitted that this biomass plant is facing a very difficult time for its survival and reiterated the prayer. The petitioner also filed written submissions on 29.08.2013.

6. During the hearing, Counsel for the respondent filed written submissions. The respondent has mentioned that requests of the petitioner for purchase of power at average power purchase cost on short term basis from time to time were considered in the year 2012. The plant was commissioned on 08.12.2011 and therefore the order dated 03.05.2013 would not be applicable to the petitioner and PPA can be entered into in accordance with the tariff order dated 07.08.2007. Open access to the petitioner was never denied by the respondent nor is the matter within its jurisdiction.

7. Having heard the parties, the Commission is of the view that there can be no doubt on the scope and applicability of the order dated 03.05.2013. The order dated 03.05.2013 overhauls the Commission's order dated 02.03.2012. In effect, therefore the applicable orders in respect of biomass electricity generation are those dated 07.08.2007 (for projects commissioned upto 01.03.2012) and dated 03.05.2013 (applicable to projects commissioned on or after 02.03.2012). What the petitioner is seeking is a selective applicability of order dated 02.03.2012 which is neither possible

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nor was it intended by the Commission. It may be noted that although the original order dated 02.03.2012 had a tariff design involving two parts , the subsequent order dated 03.05.2013 has reverted the position to a single part tariff as prevailed in order dated 07.08.2007. In these circumstances, granting a two part tariff to the petitioner is not possible.

8. In light of the above conclusion of the Commission, the petitioner is only entitled to tariff under order dated 07.08.2007. The Commission appreciates that there is wide difference between the tariff applicable to the projects commissioned upto 01.03.2012 and from 02.03.2012 onwards respectively. The Commission is aware that since the petitioner's plant was commissioned towards the end of the earlier tariff period, the rates applicable to it might seem unviable.

9. In the above circumstances, the petitioner can proceed to obtain relief only under two options. One option has been suggested by the petitioner itself i.e. by way of sale to open access third party consumers. If the petitioner is able to find any customer the SLDC and M.P. Power Transmission Company shall make available short/long term open access as per the requirement of the petitioner without any let or hindrance. The other option is for the petitioner to approach this Commission under clause 10.20 of the tariff order dated 07.08.2007 for fixation of tariff for the remaining period of plant life of 20 years.

10. The petitioner may proceed with either of the two options.

Ordered accordingly.

sd/-

**(Alok Gupta)**  
**Member**

sd/-

**(A.B.Bajpai)**  
**Member**

sd/-

**(Rakesh Sahni)**  
**Chairman**